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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,555	10/24/2003	Jerome S. Veith	659-1148	3611

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EXAMINER

HAND, MELANIE JO

ART UNIT PAPER NUMBER

3761

DATE MAILED: 08/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/693,555	<b>Applicant(s)</b> VEITH, JEROME S.	
	<b>Examiner</b> Melanie J. Hand	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

### ***Response to Arguments***

Applicant's arguments, see Remarks, filed July 27, 2006, with respect to the rejection(s) of claim(s) 1-23 under 35 U.S.C. 102 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of newly found prior art references.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-4 and 7-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Gompel et al (U.S. Patent No. 6,217,563).

With respect to **Claim 1**: Van Gompel teaches a body chassis having a front body panel comprising a terminal waist edge and a rear body panel comprising a terminal waist edge. A first length is defined between the terminal waist edge of said front body panel and said terminal waist edge of said rear body panel. A laterally extending centerline is defined halfway between said terminal waist edges of said front and rear body panels. An absorbent insert comprises first and second longitudinally spaced end portions each having a terminal edge and opposite laterally spaced side edges. The body chassis is comprised of body panels comprised of a laminate structure having a plurality of layers in which all of the layers have the same length such that the thickness of said body panels, and thus said chassis, is the same along said length of said layers. As can be seen in Fig. 1, the absorbent insert bridges said gap between said front and rear body panels with said first and second portions overlying and connected to said front and rear body panels, respectively. The terminal edges of said first and second end portions are longitudinally spaced from the terminal waist edges of the front and rear body panels, and are also longitudinally spaced from the terminal crotch edges of the body panels. The absorbent insert is comprised of a retention portion 48 formed from absorbent material. The retention portion has first and second longitudinally spaced ends and a second length defined between said first and second ends. Although Van Gompel does not teach that at least 70% of the second length is positioned between the lateral centerline and the terminal waist edge of the front body panel, it would be obvious to one of ordinary skill in the art to arrange the insert in this manner relative to the body panels, as such arrangement would be more effective in absorbing urine insult, particularly for male users.

With respect to **Claim 2**: The absorbent assembly comprises single retention member 48 defining a retention region. As can be seen in Fig. 2, retention portion 48 has first and second ends corresponding to first and second boundaries.

With respect to **Claims 3,4**: Van Gompel teaches that the retention portion is comprised of 37% superabsorbent material by weight.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Van Gompel et al ('563) in view of Lantz et al (U.S. Patent No. 5,836,930).

With respect to **Claim 5**: Van Gompel does not teach a retention capacity of at least 20 g/g. Lantz teaches an absorbent structure having a liquid uptake of 25-40 g/g after 60 minutes under load. (Col. 14, lines 1-6) Lantz teaches a load of 0.3 psi, or 2.06 kPa, by incorporating an absorbency-under-load (AUL) determination method taught in EP 339,461 A1, published November 2, 1998, which is roughly equivalent to the pressure exerted on a sample that is subjected to the centrifuge method set forth by applicant, therefore the results taught by Lantz are concluded herein to be relevant. Lantz teaches that this structure exhibits improved absorbent capability, therefore it would be obvious to one of ordinary skill in the art to modify the absorbent insert taught by Van Gompel, comprised of substantially similar relative amounts of superabsorbent material and cellulose pulp (25 wt % superabsorbent) to have the absorbent capacity taught by Lantz.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Van Gompel et al ('563) in view of Van Dyke et al (U.S. Patent Application Publication No. 2005/0027267).

With respect to **Claim 6**: Van Gompel does not teach a particular density for the absorbent insert. Van Dyke teaches an absorbent density of 0.2 g/cc, wherein the absorbent material is comprised of 50% superabsorbent and 46% fluff, and teaches that the invention provides an improved fit and improved liquid intake, therefore it would be obvious to one of ordinary skill in the art to modify the composition of the absorbent insert of Van Gompel so as to have the amount by weight of superabsorbent and density taught by Van Dyke. ('267, Abstract, ¶ 0103)

With respect to **Claim 7**: Van Gompel teaches a front body panel comprising a terminal waist edge and a terminal crotch edge, a rear body panel comprising a terminal waist edge and a terminal crotch edge, wherein the terminal crotch edge of said rear body panel is longitudinally spaced from and forms a gap with said terminal crotch edge of said front body panel. A first length is defined between the terminal waist edge of said front body panel and said terminal waist edge of said rear body panel. A laterally extending centerline is defined halfway between said terminal waist edges of said front and rear body panels.

With respect to **Claim 8**: Van Gompel teaches that the body panels of the chassis are comprised of a nonwoven material.

With respect to **Claims 9,15,22**: Lantz teaches a flexible liquid impermeable material for backsheet 30. (Col. 6, lines 27-32)

With respect to **Claims 10,16**: Lantz teaches tape tabs 36 configured for securing front and rear waistband portions 12 and 14 about the wearer. (Col. 4, lines 17-19)

With respect to **Claim 11**: Van Gompel teaches a front body panel 52 comprising a terminal waist edge 60 and a terminal crotch edge 62, a rear body panel 53 comprising a terminal waist edge 61 and a terminal crotch edge 63, wherein the terminal crotch edge of said rear body panel is longitudinally spaced from and forms a gap with said terminal crotch edge of said front body panel. A first length is defined between the terminal waist edge of said front body panel and said terminal waist edge of said rear body panel. A laterally extending centerline is defined halfway between said terminal waist edges of said front and rear body panels. An absorbent insert 32 comprises first and second longitudinally spaced end portions 82 each having a terminal edge and opposite laterally spaced side edges. As can be seen in Fig. 1, the absorbent insert 32 bridges said gap between said front and rear body panels with said first and second portions overlying and connected to said front and rear body panels, respectively. The terminal edges of said first and second end portions are longitudinally spaced from the terminal waist edges of the front and rear body panels, and are also longitudinally spaced from the terminal crotch edges of the body panels. The absorbent insert is comprised of a retention portion 48 formed from absorbent material. The retention portion has first and second longitudinally spaced ends and a second length defined between said first and second ends. Although Van Gompel does not teach that at least 70% of the second length is positioned between the lateral centerline and the terminal waist edge of the front body panel, it would be obvious to one of ordinary skill in the art to arrange the insert in this manner relative to the body panels, as such arrangement would be more effective in absorbing urine insult, particularly for male users.

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With respect to **Claim 12**: Van Gompel teaches that the lengths of the body panels 52,53 collectively do not exceed 80% of the total article length, therefore in embodiments where the insert terminal edges are substantially adjacent the terminal crotch edges 62,63 of the panels, the insert will contribute 20% of the length, and thus the second length associated with the insert will be approximately 25% of the first length associated with the article, which satisfies the limitation of claim 12.

With respect to **Claim 13**: Van Gompel teaches that the retention portion 48 is comprised of 37% superabsorbent material by weight.

With respect to **Claim 14**: Van Gompel teaches that the body panels 52,53 are comprised of nonwoven material.

With respect to **Claim 15**: Van Gompel teaches that the body panels 52,53 comprise an elastomeric material that is stretchable along the lateral width 54 of the article.

With respect to **Claim 16**: Van Gompel teaches pair of fasteners 36 connected to the rear body panel at the rear waistband portion 12 connecting the rear body panel to the front body panel.

With respect to **Claims 17,20**: With respect to the step of providing a body chassis, Van Gompel teaches providing a chassis having front body panel comprising a terminal waist edge and a terminal crotch edge and a rear body panel comprising a terminal waist edge and a terminal crotch edge, wherein the terminal crotch edge of said rear body panel is longitudinally spaced from and forms a gap with said terminal crotch edge of said front body panel. A first

length is defined between the terminal waist edge of said front body panel and said terminal waist edge of said rear body panel. A laterally extending centerline is defined halfway between said terminal waist edges of said front and rear body panels.

With respect to the step of fixedly securing an absorbent insert to the chassis, Van Gompel teaches an absorbent insert attached to said chassis comprising first and second longitudinally spaced end portions each having a terminal edge and opposite laterally spaced side edges. As can be seen in Fig. 1, the absorbent insert bridges said gap between said front and rear body panels with said first and second portions overlying and connected to said front and rear body panels, respectively. The terminal edges of said first and second end portions are longitudinally spaced from the terminal waist edges of the front and rear body panels, and are also longitudinally spaced from the terminal crotch edges of the body panels. The absorbent insert is comprised of a retention portion 48 formed from absorbent material. The retention portion 48 has first and second longitudinally spaced boundaries and a second length is defined between said first and second boundaries. Van Gompel teaches that the lengths of the body panels collectively do not exceed 80% of the total article length, therefore in embodiments where the insert terminal edges are substantially adjacent the terminal crotch edges of the panels, the insert will contribute 20% of the length, and thus the second length associated with the insert will be approximately 25% of the first length associated with the article, which satisfies the limitation of claim 12. Although Van Gompel does not teach that at least 70% of the second length is positioned between the lateral centerline and the terminal waist edge of the front body panel, it would be obvious to one of ordinary skill in the art to arrange the insert in this manner relative to the body panels, as such arrangement would be more effective in absorbing urine insult, particularly for male users.

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With respect to **Claim 18**: The absorbent assembly comprises single retention member 48 defining a retention region. As can be seen in Fig. 2, retention portion 48 has first and second ends corresponding to first and second boundaries.

With respect to **Claim 19**: Van Gompel teaches that the retention portion is comprised of 37% superabsorbent material by weight.

With respect to **Claim 21**: Van Gompel teaches that the body panels are comprised of nonwoven material.

With respect to **Claim 22**: Van Gompel teaches that the body panels 52,53 comprise an elastomeric material that is stretchable along the lateral width 54 of the article.

With respect to **Claim 23**: Van Gompel teaches pair of fasteners 36 connected to the rear body panel at the rear waistband portion 12 connecting the rear body panel to the front body panel.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand  
Examiner  
Art Unit 3761

MJH

**TATYANA ZALUKAEVA**  
**SUPERVISORY PRIMARY EXAMINER**

